

m/035/002

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BY FACSIMILE

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JAN 04 2005

DIV. OF OIL, GAS & MINING

Ms. Mary Ann Wright, Acting Director
Division of Oil, Gas and Mining (DOGM)
1594 West North Temple, Suite 1210
PO Box 145801
Salt Lake City, UT 84114-5801

Dear Ms. Wright:

On 28DEC2005 we accessed the records of DOGM with the following results, and further requests.

1) It appears that Kennecott Utah Copper Corporation (KUCC) has requested release of ten (10) sections of Real Estate from the DOGM Permit No. M/035/002 pertaining to current and historic mining operations in Southwest Salt Lake County. This permit area encumbers Real Estate that is not owned by KUCC or Kennecott Land Company (KLC). We would like to understand the mechanism by which KUCC extended the permit to include Real Estate that the company does not own.

2) The Real estate requested to be released from DOGM Permit No. M/035/002 appear to be regulated by a Notice of Intention dated August 9th, 1976 and a DOGM Board Decision regarding a Mining and Reclamation Plan of February 22nd, 1978. A "Mined Land Reclamation Contract" is also mentioned. We hereby request access and copies of these documents.

3) 21JUN2004 letter from Paula Doughty of KUCC to Wayne Hedberg of DOGM, a reference is made at the top of page 2 as to former operations of "excess water disposal facilities" that were "permanently closed" in 1987. It is our understanding that these "excess water disposal facilities" are located within the above mentioned DOGM Permit No. M/035/002, and therefore were possibly under the regulation of DOGM during the construction period of 1983-84. We hereby request documentation regarding the "opening" of these facilities and a determination whether KUCC followed appropriate guidelines and operational procedures under the above referenced permit.

4) It is important to assess the impact that these "excess water disposal facilities" have had on the environment, especially the aquifer and groundwater regime. As you may know, the Utah Department of Environmental Quality (UDEQ) Executive Director,

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Dianne Nielson, approved certain contractual documents on 31AUG2004 pertaining to the aquifer and groundwater regime. There some that believe this issue will continue to be in front of the public, and perhaps modifications will be made to the agreements. Therefore, we request that we be notified of any opportunity to comment to the DOGM Staff and/or DOGM Board with respect to the request for release of the Real Estate from the permit area. We suggest that this Real Estate release from the DOGM permit be considered after the completion of the sludge removal which, according to the correspondence in file is anticipated to be "towards the end of 2007".

We thank you for your consideration of our interest in this matter, and look forward to working with you in the future.

Cordially,



Tom Belchak
LANCE Consulting Group, L.C.
1780 West 9000 South
Suite 301
West Jordan, UT 84088

Phone: 801-577-4361

LANCE Consulting Group, L.C.
1780 W. 9000 S. Suite 301
W. Jordan, UT 84088

Handwritten: Susan
→ file
MD350002

To:

Mary Ann Wright
DOGM
359-3940

From:

Tom Belchak
577-4361 (Cell)

Date: 4-13-05
Number of Pages: 10
Phone: 801-577-4361
Fax: 801-486-8407

Remarks:

FYI

Tom Belchak
LANCE Consulting Group L.C.

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APR 13 2005
DIV. OF OIL, GAS & MINING

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FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

APR 12 2005

MARKUS B. ZIMMER, CLERK
BY DEPUTY CLERK

STEPHEN G HOMER (1536)
Attorney at Law
9225 South Redwood Road
West Jordan, Utah 84088
Telephone (801) 561-9665
Attorney for Proposed Intervenor THOMAS A BELCHAK

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF UTAH

THE STATE OF UTAH, by and)	
through THE UTAH STATE)	
DEPARTMENT OF HEALTH,)	
	)	MOTION OF THOMAS A BELCHAK
Plaintiff	)	TO INTERVENE AND TO
	)	SET ASIDE IMPROPERLY-ENTERED
	)	CONSENT DECREE
vs)	
)	
KENNECOTT CORPORATION,)	
)	
a New York corporation,)	
)	
Defendant.)	
)	
)	
SALT LAKE COUNTY WATER)	
CONSERVANCY DISTRICT,	)	Civil No. 86-C-0902G
)	
Intervenor	)	Case assigned to Judge Greene

Proposed Intervenor THOMAS A BELCHAK, through his undersigned counsel, files the foregoing "Motion to Intervene and to Set Aside Improperly Entered Consent Decree", for the purpose of setting aside the previously-entered [21 August 1995] consent decree.


The factual and legal basis for this Motion is more particularly described in that MEMORANDUM OF LAW IN SUPPORT OF MOTION OF THOMAS A BELCHAK TO INTERVENE AND TO SET ASIDE IMPROPERLY-ENTERED CONSENT DECREE, filed simultaneously herewith.

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APR 13 2005

DIV. OF OIL, GAS & MINING

Respectfully submitted this 12th day of April, 2005.


STEPHEN G. HOMER
Attorney for Proposed Intervenor
THOMAS A. BELCHAK

Address of Proposed Intervenor:

THOMAS A. BELCHAK
9579 South Dunsinane Drive
South Jordan, Utah 84095

CERTIFICATE OF MAILING

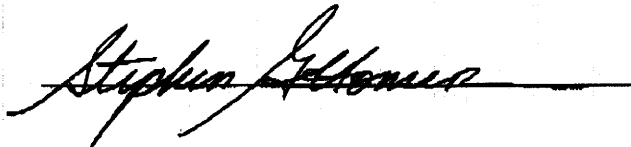
I certify that I caused a copy of the foregoing MOTION OF PROPOSED INTERVENOR THOMAS BELCHAK TO INTERVENE AND TO SET ASIDE IMPROPERLY-ENTERED CONSENT DECREE to be mailed to:

Mr Fred G Nelson, Assistant Utah Attorney General
Office of the Utah Attorney General
160 East 300 South, Fifth Floor
Salt Lake City, Utah 84114
[attorney for Plaintiff STATE OF UTAH]

Mr David W Tunderman, Attorney at Law
Parsons, Behle & Latimer
One Utah Center, Suite 1800
201 South Main Street
Salt Lake City, Utah 84147
[attorney for Defendant KENNECOTT]

Mr Dale F Gardiner, Attorney at Law
Mr Douglas J Parry, Attorney at Law
Parry, Anderson & Gardiner
1270 Eagle Gate Tower
60 East South Temple Street
Salt Lake City, Utah 84111
[attorneys for Intervenor SLCWCD]

this 12th day of April, 2005.



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Attorney for Proposed Intervenor THOMAS A BELCHAK

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF UTAH

THE STATE OF UTAH, by and)	
through THE UTAH STATE)	
DEPARTMENT OF HEALTH,	)	MEMORANDUM OF LAW IN SUPPORT OF
	)	MOTION OF THOMAS A BELCHAK
	)	TO SET ASIDE
Plaintiff)	IMPROPERLY-ENTERED CONSENT DECREE
)	
vs)	
)	
KENNECOTT CORPORATION,)	
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a New York corporation,)	
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Defendant)	
)	
-----)	
SALT LAKE COUNTY WATER)	
CONSERVANCY DISTRICT,)	Civil No. 86-C-0902G
)	
Intervenor	)	Case assigned to Judge Greene

Proposed Intervenor THOMAS A BELCHAK, through his undersigned counsel, files the foregoing MEMORANDUM OF LAW IN SUPPORT OF MOTION TO INTERVENE AND TO SET ASIDE IMPROPERLY-ENTERED CONSENT DECREE, as described herein.

ARGUMENT

**THE 1995 "CONSENT DECREE",
PREMATURELY ENTERED BY THE COURT
BEFORE THE EXPIRATION OF THE
STATUTORILY-MANDATED 30-DAY PUBLIC COMMENT PERIOD,
IS VOID AND SHOULD BE SET ASIDE**

The Proposed Intervenor THOMAS A BELCHAK is (1) a natural person, a resident of South Jordan, Salt Lake County, Utah, (2) a citizen of the United States of America, and (3) a member of the class of persons contemplated by the provisions of the CERCLA statute entitled to the "public comment" opportunities and rights, prior to the entry of any "consent decree" judgments purporting to implement any CERCLA-based litigation.

The Proposed Intervenor submits the following as the factual and legal basis justifying the intervention and further justifying the setting aside of the improperly-entered 21 August 1995 "consent decree", as described herein:

1. This action was originally filed in 1986 to obtain remedies authorized and mandated pursuant to Section 107 of CERCLA. The Plaintiff was State of Utah acting by and through its Department of Health [the Plaintiff].
2. The Defendant therein was Kennecott Corporation [hereinafter "Defendant KENNECOTT"]¹, a New York corporation but registered and licensed to conduct

¹Subsequent to the 1986 filing of the original litigation the Kennecott Corporation has changed its corporate name---to "Kennecott Utah Copper Corporation ["KUCC"]. However, this Memorandum will utilize the name "KENNECOTT" for either entity.

business and other activities within the State of Utah. The primary business activity of Defendant KENNECOTT is the continuing operation of mining operations of the "Bingham Canyon copper mine", located in the southwest corner of Salt Lake County, Utah, adjacent to and/or straddling the county boundary line between Salt Lake County and Tooele County, and the conduct of the various mechanical, physical and chemical activities associated with the ore-removal and extraction, ore-transportation, refining and/or smelting processes for the ores and minerals extracted from the "Bingham Canyon mine".

3. The case was immediately---even before Defendant was served---put "on hold" (with consent of Court) and the parties stipulated to themselves a 5-year period to further study the issue.

4. In 1991 parties proposed a "consent decree" be entered, and a "consent decree" was actually entered in 1991, albeit in violation of the 30-day "public comment" period prescribed by CERCLA.

5. In 1991 the Salt Lake County Water Conservancy District ["SLCWCD"], through its authorized attorneys, filed motion to intervene and COMPLAINT IN INTERVENTION, and was ultimately permitted by the Court to intervene in the filed, 6-year-old action.

6. In 1991 the Court set aside the 1991 "consent decree" on the basis that the requisite 30-day "public comment" period had not been observed.

7. Between 1991 and 1995 the parties, including Intervenor SLCWCD, undertook extensive discussions and negotiations concerning the groundwater (underground aquifer) contamination allegedly caused by Defendant KENNECOTT and/or its predecessors-in-interest.

8. In 1995 the Plaintiff, the Defendant and the Intervenor submitted, through their counsel, a proposed "consent decree". The proposed "consent decree" reflected the ongoing settlement negotiations and agreements reached by the real-parties-in-interest during the previous 4-year period.

9. The proposed "consent decree" was materially different from the previous "consent decree" which had been set aside by the Court in 1991.

10. The proposed "consent decree" was submitted to and received by the Court on 1 August 1995.

11. The "consent decree" was signed by the Court and entered on or about 21 August 1995, prior to the expiration of the statutorily-required 30-day "public comment" period (which would have extended to and including 31 August 1995) contemplated for the "consent decree" pursuant to the relevant provisions of the CERCLA

statute, under which the action was originally filed and under which the "consent decree" was to be filed and implemented.

12. The signature and entry of the "consent decree" in violation of the 30-day "public comment" period (extending to and including 31 August 1995) renders the "consent decree" null and void and without legal effect, such that the 1995 "consent decree" should be set aside for essentially the same reasons as the 1991 "consent decree" was set aside.

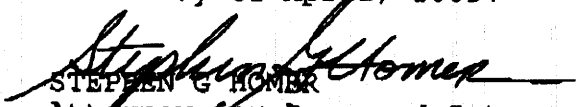
13. The premature entry of the "consent decree" renders the decree invalid.

14. The provisions of the "consent decree", albeit negotiated by the parties, are inadequate to protect the underground aquifer which has been polluted and contaminated by the knowing and negligent actions of Defendant KENNECOTT and its predecessors-in-interest and for which CERCLA prescribes an appropriate remedy, namely "restoration" of the damaged public resource. The remedies and damages proposed within the 1995 "consent decree" are woefully inadequate by numerous orders of magnitude---to even begin to address, let alone "restore" the damaged public resource (the underground aquifer) to its pre-contamination condition. For example, the "consent decree" contemplates a "settlement" in which

KENNECOTT has provided to the State of Utah a mere \$37 million [a \$28 million "letter of credit" and a cash payment of \$9 million]. In direct contrast is the fact that the United States Environmental Protection Agency [EPA] had previously estimated that the cost of the "remediation" of the underground aquifer so contaminated by KENNECOTT was \$2.2 BILLION.

The "consent decree"---albeit "negotiated", by a "sweetheart deal" between the governmental regulator (i.e. State of Utah, in its "public trustee" capacity under CERCLA) and the contaminator (i.e. KENNECOTT)---provides for less than one-percent (1%) of the actual "restoration" costs for damage to the natural resource. The provisions of the "consent decree" should be renegotiated to more appropriately address the contamination, assure meaningful and substantial "restoration" of the natural resource, and further protect the people of the State of Utah.

Respectfully submitted this 12th day of April, 2005.


STEPHEN G. HOMER
Attorney for Proposed Intervenor
THOMAS A BELCHAK

Address of Proposed Intervenor:

THOMAS A BELCHAK
9579 South Dunsinane Drive
South Jordan, Utah 84095

CERTIFICATE OF MAILING

I certify that I caused a copy of the foregoing MEMORANDUM OF LAW IN SUPPORT OF MOTION OF PROPOSED INTERVENOR THOMAS A BELCHAK TO

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Mr Fred G Nelson, Assistant Utah Attorney General
Office of the Utah Attorney General
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[attorney for Plaintiff STATE OF UTAH]

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Mr Dale F Gardiner, Attorney at Law
Mr Douglas J Parry, Attorney at Law
Parry, Anderson & Gardiner
1270 Eagle Gate Tower
60 East South Temple Street
Salt Lake City, Utah 84111
[attorneys for Intervenor SLCWCD]

this 12th day of April, 2005.

